(2)

Supreme Court, U.S.
FILED
941506 MAR 13 1995
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

JEROME S. WAGSHAL,

Petitioner, Pro se

v.

Maurice Bramon, *et al.*

and

BARNETT BANKS, INC., *et al.*

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI APPENDIX

Jerome S. Wagshal, Pro Se*
5920 Empire Way
Rockville, MD 20852
(301) 770-0770

** A member of the Bar of this Court, acting as counsel of record*

March 13, 1995

48 pp

APPENDIX A

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR ELEVENTH CIRCUIT

No. 92-2292

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCT 13 1994
MIGUEL J. CORTEZ
CLERK

MAURICE BRAMON, JOHN HELLER, RICHARD ROSENBERG, THEODORE ROSENBERG, HARVEY KARP, TRUSTEES OF CIRCLE PACKAGING CORP. PENSION PLAN, DONALD F. SULLIVAN, FLORENCE W. SULLIVAN, JT, HOWARD WEINER, JOHN PAUL DECKER,

Plaintiffs-Appellees,

JEROME S. WAGSHAL, Objecting Class Member,

Appellant,

versus

BARNETT BANKS, INC., CHARLES E. RICE, ALBERT D. ERNEST, STEPHEN A. HANSEL, ALLEN L. LASTINGER, JR., CHARLES W. NEWMAN AND EARL B. HADLOW,

Defendants-Appellees

HELEN B. RUDMAN,

Claimant.

Appeal from the United States District Court
for the Middle District of Florida

(October 13, 1994)

Before: HATCHETT and ANDERSON, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

We conclude that Appellant has no standing. Guthrie v. Evans, 815 F.2d 626 (11th Cir. 1987). Accordingly, this appeal is

DISMISSED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR ELEVENTH CIRCUIT

No. 92-2292

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 13 1994
MIGUEL J. CORTEZ
CLERK

MAURICE BRAMON, JOHN HELLER,
RICHARD ROSENBERG, THEODORE ROSENBERG,
HARVEY KARP, TRUSTEES OF CIRCLE PACKAGING
CORP. PENSION PLAN,
DONALD F. SULLIVAN, FLORENCE W. SULLIVAN, JT,
HOWARD WEINER, JOHN PAUL DECKER,

Plaintiffs-Appellees,

JEROME S. WAGSHAL,
Objecting Class Member,

Appellant,

versus

BARNETT BANKS, INC.,
CHARLES E. RICE, ALBERT D. ERNEST,
STEPHEN A. HANSEL, ALLEN L. LASTINGER, JR.,
CHARLES W. NEWMAN AND EARL B. HADLOW,

Defendants-Appellees

HELEN B. RUDMAN,

Claimant.

On Appeal from the United States District
Court for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND
SUGGESTIONS(S) OF REHEARING EN BANC

Before: HATCHETT and ANDERSON, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM;

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 34, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ R. L. Anderson

UNITED STATES CIRCUIT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED

92 JAN 31 AM 10:01

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

MAURICE BRAMON, et al.,

Plaintiffs,

v. Case No. 90-216-CIV-J-16

BARNETT BANKS, INC., et al.,

Defendants.

ORDER APPROVING CLASS SETTLEMENT AND PLAINTIFF'S PETITION FOR ATTORNEYS' FEES AND EXPENSES

This cause is before the Court on the Plaintiffs' motion to approve the stipulation of settlement (the "Settlement") entered into between the parties concerning this class action, and the Plaintiffs' petition for attorneys' fees and expenses. The Court having reviewed the memoranda of the parties, as well as the letters and memoranda of the

five[1] objectors, and having held a three-hour hearing on January 3, 1992, at which time the Court accepted testimony and evidence presented by the parties, as well as one of the objectors, Mr. Jerome Wagshal, the Court now makes the following findings of fact and conclusions of law:

Findings of Fact

1. This litigation was commenced by the filing of several different actions in March 1990. In July 1990, Plaintiffs filed an Amended Class and Derivative Complaint (the "Amended Complaint") against Barnett Banks, Inc. ("Barnett") and certain of its senior officers and directors: Charles E. Rice, Albert D. Ernest, Jr., Stephen A. Hansel, Allen L. Lastinger, Jr., Charles W. Newman, and Earl B. Hadlow. The Amended Complaint

[1] At the time of the hearing, only four objections had been received by the Court. A fifth objector, Mr. James Reim, filed his objection on January 7, 1992. Although this objection was late pursuant to the published notice, and was not part of the discussion at the January 3, 1992, this Court has duly considered this objection as well as the four previously filed.

was filed on behalf of a class consisting of all persons who purchased Barnett securities during the period March 1989 to March 1990. For purposes of the Settlement, the period has been extended to August 15, 1988 through August 15, 1991. Plaintiffs alleged, among other things, the Defendants knowingly or recklessly made materially false and misleading statements with respect to Barnett's financial condition, specifically loan loss reserves.

2. In July 1990, Plaintiffs also filed their motion for class certification. Shortly thereafter, Defendants moved to stay class certification proceedings until 45 days after the Court ruled on the motion to dismiss that the Defendants planned to file. A few days later, Plaintiffs filed their response to this motion, arguing, in part, that any such stay would unduly delay these proceedings. By order dated August 23, 1990, the Court granted Defendants' motion to stay

class certification. On October 3, 1990, the Court denied Plaintiffs' objections to Judge Schlesinger's August 23, 1990 order granting Defendants' motion to stay class certification proceedings.

3. Meanwhile, at the end of July 1990, Plaintiffs served their first consolidated set of written discovery requests on all Defendants. Although these discovery requests were broad, Plaintiffs' counsel were willing to negotiate a phased document production. Under this proposal, Defendants would first produce readily obtainable, particularly important documents, leaving other documents for production at a later time.

4. At the end of August 1990, Defendants moved to stay merit discovery, asking the Court to extend the time in which they could respond to Plaintiffs' discovery requests until after the Court's ruling on Defendants' motion to dismiss, which was

filed shortly thereafter. On October 2, 1990, the Court heard extensive oral argument on Defendants' motion to stay discovery. at the conclusion of argument, the Court urged the parties to negotiate further in attempt to solve, or at least narrow their differences regarding the pace and sequence of discovery. At the end of the hearing, counsel for both sides sat down together for a protracted period, each side negotiating in good faith. Though the differences were narrowed by this process, they were not eliminated. Accordingly, both Plaintiffs and Defendants made further written submissions to the Court, including forms of order. Finally on October 18, 1990, the Court entered an order which generally denied the relief requested by Defendants' motion to stay discovery.

5. In August 1990, Defendants filed a motion to dismiss the class and derivative allegations of the Amended Complaint. During

October 1990, Plaintiffs filed separate memoranda of law in opposition to the Defendants' motion. On November 29, 1990, the Court, without opinion, denied the motion to dismiss.

6. In November and December 2990, the parties intensified their discovery. Plaintiffs served discovery requests on Price Waterhouse, Barnett's auditor. Defendants served notices of deposition and written discovery requests on various Plaintiffs. Plaintiffs served responses to Defendants' written discovery just prior to Christmas 1990. Also during this time, Plaintiffs moved to compel.

7. In January 1991, after denial of their motion to dismiss, Defendants answered the Amended Complaint and asserted affirmative defenses. as 1991 progressed, both parties vigorously pursued discovery. Plaintiffs obtained discovery not only from Defendants, but also from Barnett's auditor.

8. At the end of January 1991, Defendants moved to compel production from Defendants.[sic] In this motion, Defendants sought a number of documents directed to class certification and on the merits. Subsequently, Plaintiffs moved for a protective order.

9. On March 8, 1991, following extensive briefing on all these discovery motions, the Court entered an order which granted Plaintiffs' motion to compel in part, granted Defendants' motion to compel in part, and determined that Plaintiffs' motion for a protective order was moot.

10. The Court's discovery order of March 8, 1991, spawned additional filings, including Defendants' motion for clarification and Plaintiffs' objections regarding different portions of the order. Defendants' motion for clarification was granted by order dated May 8, 1991, and Plaintiffs' moved for reconsideration of that

order. On April 26, 1991, the Court denied Plaintiffs' objections to the Court's March 8, 1991 order. Thereafter, Plaintiffs unsuccessfully sought a writ of mandamus from the United States Court of Appeals for the Eleventh Circuit.

11. In April 1991, Defendants filed a motion for partial summary judgment in their favor for certain of the counts in the Amended Complaint. Plaintiffs then agreed to the dismissal of the claims under the Securities Act of 1933 (Counts II, III and IV), but continued to pursue their claims asserted under Section 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 10B-5 (Count I). Later, Plaintiffs also agreed to the dismissal of the derivative portions of the Amended Complaint (Count V). ON April 23, 1991, and June 12, 1991, the Court approved the dismissal of the counts.

12. On July 22, 1991, Defendants filed an extensive motion for judgment on the

pleadings on Count I, the Section 10(b) and Rule 10b-5 claim, and appended orders from seventeen recent cases decided in other United States District Courts which had dismissed similar federal securities class action suits brought against financial institutions and their officers.

13. Following this intensive discovery and motion practice, the parties to this litigation began settlement negotiations in mid-1991. Prior to mid-1991, the possibility of settlement of the litigation had been considered, but serious negotiations had not taken place. By mid-1991, on the basis of their considerable investigation and discovery, Plaintiffs' counsel has [sic] represented that they had a clear view of the strengths and weaknesses of their case. In particular, Plaintiffs' counsel reviewed minutes of the Board of Directors of Barnett and its audit committee, as well as the work papers of Barnett's auditor, Price

Waterhouse, all directly relating to loan loss reserves. These documents demonstrated to Plaintiffs' counsel that Barnett's loan reserve methodology appeared to be conservative and prudent.

14. Early in the negotiations, Plaintiffs' counsel realized that, if there was to be a settlement, warrants for the purchase of Barnett stock would necessarily comprise most of the consideration paid for the benefit of the class. Thereafter, at the end of July 1991, following weeks of negotiations between Plaintiffs and Defendants, the parties reached a claims-made settlement with a total value of $1,6000,000.00, including warrants having a value of $1,300,000.00.

15. At this point, the negotiations were not entirely complete. The items in dispute now centered on the exact terms of the warrants. Defendants initially insisted that the exercise price (the price at which

Barnett shares could be purchased through exercise of the warrants) must be $48 per warrant Plaintiffs argued for a lower exercise price. Defendants also took the position that the warrants, if they became exercisable April 1, 1992, must expire on July 31, 1992. Plaintiffs argued that the expiration date must be later.

16. Defendants backed up their position with a valuation by a nationally recognized investment banker. In September 1991, as the negotiations continued, Defendants sent to Plaintiffs an evaluation by the Wall Street firm Dillon, Read & Company ("Dillon Read"). According to Dillon Read, 1,300,000 warrants would have a value of $1,300,000.00, assuming an exercise price of $48 per share and an exercise period of April 1, 1992 through July 31, 1992.

17. Despite the undeniable expertise and reputation of Dillon Read, Plaintiffs were not satisfied. Plaintiffs consulted

their own investment banker, Howard, Lawson & Company ("Howard Lawson"). Drawing on Howard Lawson's expertise, as well as their own experience in fashioning settlements in securities class actions, Plaintiffs' counsel wanted better terms. Plaintiffs insisted on a lower exercise price and longer exercise period.

18. Defendants obtained another valuation from Dillon Read dated October 22, 1991, with an exercise price of $45.50 per share and an exercise period of April 1, 1992 to July 31, 1992. Plaintiffs rejected this lower exercise price and insisted on adding a fixed formula tying the exercise price to the market price of Barnett common stock, thus protecting class members against an unexpected fall in the price of Barnett stock pending final approval of the settlement and delivery of the warrants. Finally, Plaintiffs insisted that the warrants, exercisable beginning on April 1, 1992, must

expire August 31, 1992, and not July 31, 1992. Counsel for both Plaintiffs and Defendants reconsidered their positions and consulted with their experts and clients.

19. Defendants agreed to the lower exercise price, the addition of a fixed formula, and an extension of the expiration date of the exercise period. The exercise price dropped from Defendants' initial position of $48 per share to $45.50 per share. In addition, the exercise price could not exceed 140% of the closing price of Barnett's common stock on the day before the beginning of the exercise period. Finally, the exercise period would end August 31, 1992.

20. After these improvements in the terms of the warrants, Howard Lawson was able.to confirm to Plaintiffs' counsel that the warrants had a fair market value as of October 22, 1991 of $1.00 each. Indeed, there is sound reason to believe that the

fair market value of each warrant as of issuance will be considerably in excess of $1.00. This is because, as noted above, Dillon Read had already valued the warrants at $1,300,000 total, before the warrants' terms were sweetened by the addition of tying the exercise price to any downward movements in Barnett's stock through imposition of the 140% formula, and the extension of the exercise period through August 31,1992. The Defendants also agreed to pay the expense of administering the Settlement, including newspaper ads, printing and postage.

21. On October 28, 1991, after extensive , protracted and arms-length negotiations the Stipulation of Settlement was signed by the parties' counsel and filed with the Court.

22. The Settlement negotiated by the parties provides that the Defendants shall pay on a claims made basis 1,250,000 warrants, valued as of October 22,1991.

(class members have until February 10,1992 to mail their proof of claim.) Also, pursuant to the Settlement, Defendants have put into escrow $300,000.00 in cash (to be held in an interest bearing account) and 50,000.00 warrants, which are available for Plaintiffs' fees and expenses if awarded by the Court. The Settlement also provides for the certification, for Settlement purposes only, of a class of Barnett equities. The class is defined as all persons or entities who purchased, reinvested in,or otherwise acquired interest in any equity securities, including common stock and preferred stock, issued by Barnett or any security which was converted into an equity security of Barnett subsequent to its issuance during the settlement class period (August 15,1988 to August 155,1991, inclusive), each in his, her,or its individual capacity, and any and all collective representatives, trustees, assigns, heirs, executors, administrators,

custodians, predecessors or successors in interest, or any other person having any legal or beneficial interest other than Defendants in this litigation as defined in the Settlement, and their officers, directors, partners,or employees members of their immediate families.

23. On November 14, 1991, the Court ordered that this action shall proceed as a class action, for settlement purposes only, under Rule 23 of the Federal Rules of Civil Procedure. In addition, the Court approved the form of the Notice of Pendency of Class Action, Proposed Settlement and Hearing Thereof and Right to Share in Settlement Proceeds (the "Notice") and the publication of a summary notice. The Court also set a hearing for January 3, 1992 to determine whether the proposed settlement should be approved and to consider Plaintiffs' application for attorneys' fees.

24. Plaintiffs seek $300,000.00 in

cash and 50,000 warrants for payment of fees and expenses. The expenses submitted are $55,226.71. The balance of the fees and expense award will be applied to fees. Plaintiffs' counsel, in the aggregate, have expended 3,069 hours, for a total lodestar of $744,943.25.

25. The notice was published in the national editions of the Wall Street Journal and U.S.A.Today on November 18,1991. In addition, more than 37,000 copies of the Notice were sent to shareholders who held Barnett stock in their own name, while more than 38,000 Notices have been sent to shareholders who hold Barnett stock through the name of a representative, commonly known as a street name.

26. A total of four objecting class members, objecting to the approval of the Settlement, were received by the Court as of January 3,1992, the date of the hearing. One more objection was received, and filed with

the Court on January 7, 1992. This Court is cognizant of a total of five objections as of the date of this Order.

27. On January 3,1992, this Court held a three hour hearing and heard arguments from counsel for the parties, as well as from the only objecting class member present, Mr. Wagshal. The Court afforded the parties and Mr. Wagshal an opportunity to present their views, testimony and evidence that they deemed relevant.

Conclusions of Law

1. Rule 23(e) requires notice of a proposed dismissal or compromise "in such manner as the Court directs." The purpose of the notice is to provide absent class members with certain basic information so that they have an opportunity to consider the terms of the settlement. Heit v. Amrep Corp., 82 F.R.D. 130 (S.D.N.Y. 1979). On November 14 1991, this Court approved the notice sent out to class members, as stated earlier in this

Order. Again, on review the Court finds that the notice in this case was sufficient to meet the requirements of both Rule 23(e) and due process. The settlement terms give sufficient, basic information to a shareholder to allow him/her to make a rational decision on whether to participate in the settlement.

2. A proposed class action settlement and any award of attorney's fees and costs in a class action requires court approval. See Piambino v. Bailey, 757 F.2d 1112, 1139-42 (11th Cir. 1985), cert. denied 476 U.S. 1169 (1986). Under Rule 23(e), Fed.R.Civ.P., the Court should not attempt to try the case on the merits. See Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977); Behrens v. Wometco Enterprises, Inc., 118 F.R.D. 534, 539 (S.D. Fla. 1988), aff'd 899 F.2d 21 (11th Cir. 1990). A trial court's approval of a settlement will not be upset on appeal unless the court clearly abuses its discretion. See

In re Corrugated Container Antitrust Litigation, 643 F.2d 195, 207 (5th Cir. 1981).

3. If the trial court finds that the proposed settlement is fair, adequate and reasonable, the settlement should be approved. Id. There is a strong judicial policy favoring settlement. The Court recognizes that "compromise is the essence of settlement." Bennett v. Behring Corp., 737 F.2d 982, 896 (11th Cir. 1984).

4. Several factors may be considered in determining whether a proposed settlement is fair, adequate and reasonable. This Court will consider the following factors, the first six of which have been specifically enumerated by the United States Court of Appeals for the Eleventh Circuit:

(i) the likelihood of success at trial;

(ii) the range of possible recovery;

(iii) The point on or below the range of possible recovery at which a settlement is

fair, adequate and reasonable;

(iv) the complexity, expense and duration of litigation;

(v) the substance and amount of opposition to the settlement;

(vi) the stage of proceedings at which the settlement was achieved;

(vii) the recommendation and experience of counsel; and

(viii) the ability of the defendants to withstand greater liability.

Id.; Behrens v. Wometco Enterprises, Inc., 118 F.R.D. at 538-39; see also, In re Corrugated Container Antitrust Litigation, 643 F.2d at 217; Mashburn v. National Health Care, Inc., 684 F.Supp. 660, 667-68 (M.D. Ala. 1988). See generally H. Newburg, Newburg on Class Actions, Secs. 11.40-11.49 (2d Ed. 1985)(and cases cited therein).

5. Before any of these factors may be considered, however, the Court must make an initial finding that the settlement is the

product of arms-length negotiations, and not arrived at by fraud or collusion. This Court handled the discovery disputes between the parties in this litigation. Those disputes were vigorously contested by both sides. In addition, at the January 3, 1992 hearing, counsel for both parties represented that there was no fraud or collusion involved in the Settlement and that negotiations leading to settlement had been at arms-length. While the objector, Mr. Wagshal, raised the possibility of fraud or collusion, he was unable to present any evidence to support this possibility when given an opportunity to do so by the Court. Thus, Mr. Wagshal's assertion that this Settlement was a product of fraud and/or collusion is nothing more than unsupported speculation. Additionally, the papers filed with respect to the Settlement demonstrate nothing but hard-fought negotiations between the parties, particularly with respect to the terms of the

warrants. In sum, the Court finds that there was no fraud or collusion in reaching this settlement.

6. The first factor is the likelihood of success at trial by the plaintiffs. The Court has taken notice of the caselaw [sic] from other district courts throughout the nation dismissing similar actions against financial institutions. Defendants provided this Court with a complete set of the seventeen opinions extant at the time they filed their motion for judgment on the pleadings in July 1991. More important, the court gives strong weight to the Plaintiffs' counsel's candid recognition set forth in their motion for approval of the settlement, as well as statements made at the hearing on January 3, 1992, that the discovery in the case revealed a greatly-reduced likelihood of success on the merits of Plaintiffs' claims. Plaintiffs' counsel specifically referenced a number of categories of documents produced by

Barnett, with a special emphasis on Price Waterhouse's workpapers, as indicating the absence of a strong probability of success on behalf of the Plaintiffs. Accordingly, this Court finds that there is a small likelihood that the Plaintiffs would succeed at trial, even assuming they were able to survive the Defendants' motion for judgment on the pleadings and a future motion for summary judgment.

7. With respect to the second factor, the range of possible recovery, this Court finds that in June 1991, the Plaintiffs' own experts preliminary estimated damages to be in the range of $9,200,000.00 to $14,800,000.00. However, Plaintiffs' counsel pointed out both in their papers and at the hearing on January 3, 1992 that since the end of 1990, the price of Barnett stock has risen to a level that would suggest that the Defendants could make a very credible argument to a jury that the Plaintiffs' class

had suffered little, if any , damages. Plaintiffs' counsel also pointed out that for the period immediately following the announcement of Barnett's higher loan loss reserves, the price of Barnett stock only dropped fractionally. On an out-of-pocket damage standard, which is applied in Rule 10b(5) cases, see Behrens, 118 F.R.D. at 541, the Court finds that the possible range of recovery is limited by the Plaintiffs' experts' preliminary analysis. At very most, the Plaintiffs' could have hoped for a recovery in the very low eight figures range had they obtained a verdict at trial and been successful opposing post-trial motions, as well as on appeal. The Court also notes that even though the Settlement is considerably less than the best that could possibly be achieved at trial, this does not make settlement unreasonable. Id. at 542. "A settlement can be satisfying even if it amounts to a hundredth or even a thousandth

of a single percent of the potential recovery." Id.

8. Next, the Court turns to the third factor of the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable. The position of Defendants on this point is straightforward. Barnett believes that the lawsuit had virtually no settlement value other than nuisance and attorneys' fees to be incurred by Defendants and elimination of an unproductive expenditure of management time. Defendants' counsel forcefully presented this position, both in their papers and at the January 3, 1992 hearing. Plaintiffs' counsel, as stated previously, also represented that following discovery, the case was not as strong on the merits as originally thought and that the Settlement was the best resolution that they could reasonably expect to obtain. This Court agrees.

9. The fourth factor to be considered by the Court is the complexity, expense and duration of the litigation. The Court having heard the discovery disputes between the parties has knowledge concerning all these factors. Securities litigation, such as the one brought by the Plaintiffs in this case, is time-consuming, expensive and often lasts for years. Barnett's resolve to litigate every contestable issue in this case has been amply demonstrated. Plaintiffs' counsel has been no less adversarial. For example, with respect to one particular discovery dispute that this Court handled, the Plaintiffs filed an objection to the order of the district court which, when affirmed, was followed by a petition for a writ of mandamus to the United States Court of Appeals for the Eleventh Circuit. The Court has no doubt that this case is one of the most complex, expensive and potentially longlasting [sic] cases that is on the docket in the Middle District of

Florida.

10. The fifth factor to be considered by the Court is the substance and amount of opposition to the settlement. Barnett's counsel at the January 3, 1992 hearing stated that over 37,000 Notices had gone to Barnett shareholders who were holding Barnett stock in their own name while an additional 38,000 had been set to Barnett shareholders whose stock was held in street name, for a total of over 75,000 Notices. In addition, as stated previously, a newspaper summary notice was published nationwide. From all these Notices to class members, only five objections had been filed with this Court. The first objection, while raising the possibility of collusion, objects primarily to the payment of Plaintiffs' attorney's fees, which will be dealt with below. The second objection requests that the warrants be made available to individuals who sold Barnett stock for a profit. The third objection, a handwritten

letter, complains that Barnett's officers acted improperly with respect to the loan loss reserves. The fourth objection is that filed by Mr. Wagshal which will be dealt with in the following paragraph. The fifth objection, much like the first, objects to the Plaintiffs' attorney's fees, and also to the value of the warrants. The Court finds that none of the first three objections nor the fifth objection present [sic] any substantial reason to not approve the Settlement. The Court has already found hat there was no collusion or fraud between the parties and will make its own determination with respect to the proper amount of attorney's fees as set forth below. In addition, the Court finds that shareholders who have sold their Barnett stock for a profit can be excluded from recovery in the class in order that more warrants be made available to those shareholders who have sold for a loss or who have not sold their shares

and may suffer a loss. Finally, while the Court has read and considered the handwritten objection, the Court can find no reason to disapprove the Settlement merely because one out of the tens of thousands of Barnett shareholders may personally believe that Barnett's officers acted improperly.

11. Mr. Wagshal has filed a lengthy objection to the Settlement and also appeared and presented testimony at the January 3, 1992 hearing. Mr. Wagshal has also stated in both his written materials and at the January 3, 1992 hearing that he has some degree of expertise as an attorney with respect to class actions, including those involving securities fraud. mr. Wagshal was allowed the opportunity to both make argument and present testimony and evidence in opposition to the Settlement. Mr. Wagshal's failure with respect to the issue of fraud or collusion amongst the parties and their counsel has been detailed above and will not

be dealt with again here. Mr. Wagshal was equally ineffective in presenting any testimony or evidence to suggest that the Settlement was not fair, adequate and reasonable given the factors set forth in this order. Finally, the Court finds that the extension of the class period is appropriate given the nature of the allegations relating to loan loss disclosure and the continuing uncertainty of the economy during the extended period. Defendants do not want to settle this case only to be exposed to another suit concerning additions to its [sic] loan loss reserves made in the latter part of 1990 and early 1991. See Mashburn, 684 F.Supp. at 676 ("A forward extension of the class period is justified given that even after the prior announced cutoff of the class period in March 1987, [the defendant] made additional writeoffs of its bad debts.").

12. The sixth factor for this Court to

consider is the stage of the proceedings at which the settlement was achieved. Settlement in this case was reached only after substantial document discovery had occurred. In addition there was considerable pretrial motion practice which has given the Court an opportunity to become familiar with the merits of the case, the complexity of the case, as well as the advocacy of counsel for both parties. On all accounts, this Court has had sufficient information to evaluate whether the Settlement reached between the parties is fair, adequate and reasonable.

13. In determining the fairness of a proposed settlement, the Court can rely upon the recommendation of experienced counsel, and absent fraud "should be hesitant to substitute its own judgment for that of counsel." Behrens, 118 F.R.D. at 539. The weight accorded to the recommendation of counsel is dependent on a variety of factors: length of involvement in the litigation,

competence, experience in the particular type of ligiation and the amount of discovery completed. Manual for Complex Litigation, Sec. 30.41 (2nd edition 1985). Counsel for Plaintiffs and Defendants who have reached this settlement are the same advocates involved in this action since is commencement. The Court finds that counsel for all parties are competent and have been involved, and are currently involved in this type of litigation, despite Mr. Wagshal's contentions to the contrary. Further, as discussed above in this opinion, a substantial amount of discovery has been completed, and has been vigorously contested by the same counsel which proposed the settlement before this Court today. In sum, the Court will afford the recommendations of counsel in this case substantial weight.

14. The final factor which this Court will consider is the ability of the Defendants to withstand greater liability.

At the January 3, 1992 hearing, Defendants' counsel stated to the Court that its [sic] client, Barnett, was only as strong as its shareholders, and that therefore, settling this cause was appropriate despite Barnett's belief that this lawsuit was completely meritless. There is no doubt that Barnett has the resources to pay a larger judgment than the settlement currently before the Court. However, in the light of the fact that Plaintiff's case is admittedly weak, and that Barnett's stock has gained substantial strength since the commencement of this lawsuit, the court finds that settlement is the most appropriate avenue despite the defendant's ability to withstand greater liability.

15. Based upon this Court' familiarity with this cause and after reviewing the materials in the Court's file, and hearing argument, and applying the above factors, the Court finds that the Settlement was obtained

without fraud or collusion and is fair, adequate and reasonable. In conclusion, the Settlement should be approved.

16. Plaintiffs' counsel, having recovered a common fund for the benefit of the class, are entitled to a reasonable attorneys' fee from the fund as a whole. Boeing Co. v. Gemert, 444 U.S. 472, 478, 100 S.Ct. 745 (1980).

17. The attorneys' fees and reimbursement requested are reasonable and appropriate in light of its relation to the benefit conferred on the class. See Camden I Condominium Associates, Inc. v. Dunkle, 947 F.2d 768 774-75 (11th Cir. 1991); Mashburn v. National Health Care, Inc., 684 F.Supp. at 692-93. An award of attorneys' fees in cash is appropriate where the class receives non-monetary forms of compensation. Moyor v. Automatix, C.A. No. 85-2326-MC (D.Mass 1987); Elscint Ltd. Securities Litigation, MDL No. 675, C.A. No. 85-2662 K (D.Mass. 1990); Polk

v. Good, 507 A.2d 531 (Del.super.Ct. 1986); Geller v. Tabas, 462 A.2d 1078 (Del.Super. Ct. 1983); Santa Fe Southern Pacific Corp., Consolidated No. 9523, Allen, Ch. (Del. Ch. 1989); American Brands, Inc. Shareholders Litigation, Consolidated No. 9616, Berger, V.C. (Del.Ch. 1988); In re: Georgia Gulf Shareholders' Litigation, C.A. No. 11054 (Del.Ch. 1990). See generally Plaintiffs' Notice of Filing Supplemental Authorities in Support of Fee Petition.

Accordingly, it is

ORDERED AND ADJUDGED

1. That the settlement of this class action is fair, adequate and reasonable and is approved.

2. That Plaintiff's amended complaint is hereby dismissed with prejudice.

3. That Plaintiff's petition for attorneys' fees and expenses is hereby approved.

DONE AND ORDERED in Chambers in

Jacksonville, Florida, this 30th day of January, 1992.

/s/Harvey E. Schlesinger
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record and

Jerome Wagshal

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED

92 MAR 3 AM 11:29

MAURICE BRAMON, et al.,

Plaintiffs,

v. Case No. 90-216-CIV-J-16

BARNETT BANKS, INC., et al.,

Defendants.

ORDER

This cause is before the Court on the following motions: (1) Objecting Class Member Jerome S Wagshal's Motion for Amended and Additional Findings of Fact and Amendment of the Judgment Pursuant to Fed.R.Civ.P. 52(b) filed on February 19, 1992 (Document #217); (2) Objecting Class Member Jerome S. Wagshal's Objections to the Order of the

Magistrate Judge Dated February 7, 1992, filed on February 24, 1992 (Document #224); and (3) Objecting Class Member Wagshal's Motion to Strike Portions of Plaintiffs' Attorney's Response to the Objecting Class Member's Motion for Supplemental Findings, for Adoption of these Supplemental ?Findings and for Disapproval of the Proposed Settlement filed February 25, 1992 (Document #227). After due consideration of the motions, the memoranda submitted by various parties, any accompanying affidavits, and the applicable law, the Court finds that all of these motions should be denied.

1. With respect to the Magistrate Judge's Order dated February 7, 1992, the Court finds that it should be affirmed. The Court finds that Mr. Wagshal's motions filed on January 31, 1992, (Documents #207 and 208) were properly denied as moot. The Court

approved the settlement and signed the Order on January 30, 1992. The Clerk then filed the Order at 10:01 a.m. on January 31, 1992. Mr. Wagshal's motions were filed by the Clerk at 10:34 a.m., on January 31, 1992, subsequent to both the execution and filing of the Order. Therefore, the February 7, 1992, Order is not clearly erroneous or contrary to law. Fed.R.Civ.P. 72(A). The objections are overruled and the Magistrate Judge's Order is AFFIRMED.

2. The Objecting Class Member Jerome S. Wagshal's Motion for Amended and Additional Findings of Fact and Amendment of the Judgment Pursuant to Fed.R.Civ.P. 52(b) filed on February 19, 1992 (Document #217) is hereby DENIED.

3. The Objecting Class Member Wagshal's Motion to Strike Portions of Plaintiffs' Attorney's Response to the Objecting Class

Member's Motion for Supplemental Findings, for Adoption of these Supplemental ?Findings and for Disapproval of the Proposed Settlement filed February 25, 1992 (Document #227) is hereby DENIED.

This case has been settled, and the settlement has been approved by this Court.

Accordingly, the Clerk is directed to close this case.

DONE AND ORDERED in Chambers in Jacksonville, Florida, this 2nd day of March, 1992.

/S/ Harvey E. Schlesinger
HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

APPENDIX E

Federal Rules of Civil Procedure

Rule 1

These rules...shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 8

(e)(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(f) All pleadings shall be so construed as to do substantial justice.

Rule 23

(e) A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Rule 24

(a) Upon timely application anyone shall be

permitted to intervene in an action...when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.